



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Petition to Revive was mailed to the Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, this 10th day May, 2005.

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Nigel L. Scott, Esquire



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Patent Application of Edward T. Buford, III

Serial No. 09/912,692

Group Art Unit: 3747

Filed: 07/26/2001

Examiner: R. Chin

Commissioner of Patent and Trademarks
Washington, D.C. 20321

Sir:

PETITION TO REVIVE

Applicant, through counsel, respectfully requests that the Abandonment of the above application be withdrawn.. Further, Applicant respectfully requests the. revival of the Application pursuant to 37 CFR §1.137(b) as an unintentionally abandoned application. In support of this request, Petitioner states as follows:

1. That. on July 26, 2001, Applicant filed the instant application including the claims one (1)through eight (8). Subsequently, the subject application was deemed abandoned, but was later revived on Petition filed by the Applicant. Following the revival of said application. Claims (1) through (8) were examined by the Examiner and a First Office Action was mailed to applicant, through counsel, on September 30, 2003. A properly filed response to this First Office Action was filed on January 2004

2. That the record of the office with respect to the filing shows that the application was erroneously deemed abandoned and later reinstated by the office. From a review of the filings submitted to the Office, it appears that due to a clerical error in

counsel's office a working draft of the application was inadvertently submitted to the office as a corrected application. This working draft contained eleven (11) claims instead of eight (8), as in the original filed on July 26, 2001. This error has only very recently come to applicant's attention during a review of the file.

3. That subsequent to the inadvertent misfiling of the second application, the original was reinstated without any reference to the fact that there were two applications , of record. In fact, upon reinstatement of the first filed application (original) the original application was examined and a First Office Action issued on September 30, 2003. The response to the Office Action was filed on or about January 3, 2004. A request for enlargement of time and the necessary fee accompanied the response to the Office Action.

4. That the response to the Office Action addressed the matters cited by the Examiner as a result of his examination of the first filed Application, included in the response was an Amendment to the Specification, withdrawal of rejected claims 1-5; acceptance of allowed claims (6) and (7) and the cancellation and rewriting of rejected Claim 8 as new claim 9. Applicant's amendment of the claims and the Specification was consistent with and fully responsive to the actions taken by the Examiner with respect to Specification and Claims, of record and examined by the Examiner, i.e. Claims 1- 8 of the first filed application.

5. That. the amendment filed by the Applicant in response to the First Office action was rejected by the Office of the LIE as being non-responsive to the Office Action filed on . Specifically, the Office of the LIE asserted that the response to the Office Action was non-compliant because it did not contain all of the claims. On further review, it is clear that the Office of the LIE compared the claims filed with the July 26, 2001 filing with the

later filed working draft of the application submitted to the office..

6. That based upon a review of the application it is apparent that the rejection of Amendment to the First Office Action occurred because the Examiner and the Office of the LIE had reviewed different documents containing different specification and claims. As a consequence, the Office of the LIE incorrectly determined that applicant's response to the Office Action was non-responsive.

7. That the fact that the Office of the LIE and the Examiner had reviewed different documents created a discrepancy between the demands of the Examiner and the Office of the LIE. This discrepancy acted as a bar to Applicant's efforts and ability to submit an appropriate response to the demands of the Office of the LIE. In particular, Applicant was unable to include all claims i.e. the Office of the LIE was requesting from applicant a response which contained 11 claims in its response to the Office Action. It was impossible for the applicant to bridge the gap between the demands of the Notice of Non-Compliant Amendment and the First office Action because the only Claims in the Office Action were (1) through (8) while the Notice of Non-Compliant Amendment referenced 11 claims..

8. Applicant was being asked to include claims in response to the Office Action which were not addressed in the Office Action. Applicant was placed in an untenable situation. The office of the LIE would not accept the Amendment. However, to respond to the LIE, Applicant would face possible rejection by the Examiner for filing a non-responsive amendment.

9. The petition fee required under 37 CFR §1.17(m) is enclosed.

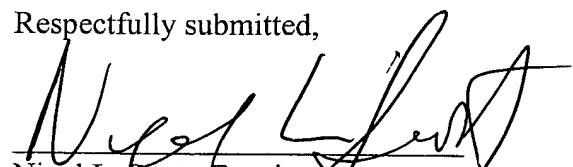
10.. Applicant further states that the entire delay between the reply due and the filing of a grantable petition was unintentional.

11. A Terminal Disclaimer under 37 CFR §1.137 (d) is not required.
12. Applicant has enclosed his response to the Notice of Non-Compliant Amendment which formed the basis of the rejection of the Response to the first Office Action resulting in the abandonment of the Application by the Examiner.

In further support of the foregoing Petition to Revive, Applicant requests as follows:

- a. The Specification and Claims filed 7-26-2001 and examined by the Examiner be considered The Specification and Claims, of record for the application. Further that the eleven (11) claims referenced by the Office of the LIE in its Notices of Non-Compliant Amendment not be considered a part of the specification and claims of the application.
- b. The Specification and Claims to the Application shall be limited to the Specification and Claims filed on July 26, 2001 and the correction and amendment thereto filed by the Applicant in its First Office Action.
- c. That the Application be reinstated for all purposes.
- d. For such other action as is deemed appropriate.

Respectfully submitted,


Nigel L. Scott, Esquire
Patent Bar #27,385
7306 Georgia Avenue, N.W.
Washington, D.C. 20012
(202) 882-5770
(202) 722-0040 Fax